

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____	:	
David CRUZ	:	
	:	
Petitioner,	:	Civil No. 99-6015 (AET)
	:	Civil No. 10-1515 (AET)
v.	:	
	:	
UNITED STATES OF AMERICA,	:	MEMORANDUM AND ORDER
	:	
Respondent.	:	
_____	:	

Petitioner, David Cruz, a federal inmate presently confined at the Coleman Federal Correction Complex in Coleman Florida, seeks to appeal this Court's denial of his motion for relief from a judgment or order pursuant to Fed. R. Civ. P. 60(b)(4), alleging that the Court's consideration of his 2255 petition, which was denied on June 20, 2000, failed to comport with due process and is thus void.

Petitioner filed a notice of appeal to the Third Circuit on June 7, 2010, but failed to pay the \$455.00 filing fee and did not submit a complete application to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915 or an affidavit claiming an entitlement to redress and stating the issues that Petitioner intends to present on appeal.

The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996) (the "Act"), which amends 28

U.S.C. § 1915, and Federal Rule of Appellate Procedure 24(a) establishes certain requirements for prisoners who are attempting to appeal in forma pauperis.

Under the Act, a prisoner bringing an appeal of a civil action in forma pauperis must submit an affidavit, including a statement of all assets, which states that the prisoner is unable to pay the fee. 28 U.S.C. § 1915(a)(1). The prisoner also must submit a certified copy of his inmate trust fund account statement for the 6-month period immediately preceding the filing of his complaint. 28 U.S.C. § 1915(a)(2). The prisoner must obtain this statement from the appropriate official of each prison or institutional facility at which he was or is confined. Id.

In addition, a party who filed a motion in a district court to appeal in forma pauperis must attach to the motion an affidavit that claims an entitlement to redress and states the issues that the party intends to present on appeal. Fed. R. App. P. 24(a).

Even if the prisoner is granted in forma pauperis status, the prisoner must pay the full amount of the \$455 filing fee. 28 U.S.C. § 1915(b)(1). In each month that the amount in the prisoner's account exceeds \$10.00, until the \$455.00 filing fee is paid, the agency having custody of the prisoner shall assess, deduct from the prisoner's account, and forward to the Clerk of

the Court payment equal to 20% of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2).

Petitioner may not have known when he submitted his notice of appeal that he must pay the filing fee, and that even if the full filing fee, or any part of it, has been paid, the Court must dismiss the case if it finds that the appeal is (1) frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). If the Court dismisses the case for any of these reasons, the Act does not permit the prisoner to get his filing fee back.

In this case, Petitioner failed to either pay the \$455.00 filing fee, or submit a complete in forma pauperis application as required by 28 U.S.C. § 1915(a)(1) and Fed. R. App. P. 24(a)(1); in particular, Petitioner failed to provide a complete in forma pauperis application that contains a signed certification from an authorized officer of the correctional facility where he presently is confined, and his six-month institutional account statement, as prescribed under 28 U.S.C. § 1915(a)(2), or an affidavit claiming an entitlement to redress and stating the issues the he intends to present on appeal.

THEREFORE, it is on this 22nd day of June, 2010;

ORDERED that Petitioner's application to proceed in forma pauperis [Civ. No. 99-6015 Docket # 24; Civ. No. 10-1515 Docket # 8] is hereby DENIED, without prejudice; and it is further

ORDERED that the Clerk of the Court shall supply to Petitioner a blank form Application to Proceed In Forma Pauperis; and it is further

ORDERED that if Petitioner wishes to proceed with his appeal he is to notify the Court, in writing addressed to the Clerk of the Court, 402 East State Street, Trenton, New Jersey 08608, within 30 days of the date of entry of this Order; Petitioner's writing shall include either (1) a complete in forma pauperis application, including an affidavit of indigence, **and** six-month prison account statement, signed and certified by an authorized officer of the institution where he is confined, **and** an affidavit stating the issues that he intends to present on appeal, or (2) the \$455 filing fee; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail.

/s/ Anne E. Thompson
Anne E. Thompson
United States District Judge